

Sh. Subhash Chander Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/702445

Court : Delhi

Decided On : Sep-17-2004

Reported in : 114(2004)DLT630

Judge : Pradeep Nandrajog, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WP(C) No. 8075/2003

Appellant : Sh. Subhash Chander

Respondent : Delhi Development Authority

Advocate for Def. : Yeeshu Jain, Adv.

Advocate for Pet/Ap. : R.C. Verma,; Mukesh Verma and; S.K. Jain, Advs

Disposition : Petition dismissed

Judgement :

Pradeep Nandrajog, J.

1. Petitioner prays that demand in the sum of Rs.22,27,664/- raised vide letter dated 21.8.1998 (Annexure 13) be quashed. The demand has been raised as under:-

' To deposit Rs.22,27,664/- on account of misuse charges and furnish third copy of challan immediately so that further action in the matter could be taken.'

2. Case of the petitioner is that he acquired perpetual leasehold rights in a plot of land measuring 200 sq.yd bearing no. A-3/51, Paschim Puri, now known as Paschim Vihar, vide perpetual lease deed dated 8.1.1974. He obtained sanction to erect a building thereon. On completion of the building he obtained an occupancy certificate on 26.8.1977.

3. In the year 1985, intending to raise further constructions, petitioner moved an application dated 22.8.1985. After obtaining sanction, he effected further construction which was completed by 11.2.1987.

4. According to the petitioner, as pleaded in para 6 of the writ petition, he received a letter from the DDA on 7.1.1984 alleging that the land was demised to be used for residential purposes but a school by the name of Premier Public School was found to be operating from the site. The letter referred to an earlier show cause notice dated 28.5.1983 issued to the petitioner. According to the petitioner he submitted a reply dated 15.1.1984 diarised at No.3288 dated 18.1.1984 in the receipt register of the DDA. Said document has been annexed as Annexure-VIII to the writ petition. It shows a stamp of DDA evidencing receipt.

5. According to the petitioner he heard nothing from the DDA. Petitioner presumed that the matter stood closed.

6. In 1995, DDA launched a scheme for conversion of leasehold properties into free hold. Petitioner submitted the requisite application on 28.3.1995. At that stage it transpired that DDA was continuing to show misuse of the plot i.e. as per DDA, property was being used for a school. On 7.1.1997, DDA required the petitioner to intimate the date of closure of the school.

7. As per the petitioner, property was never used by any school.

8. Since DDA insisted on referring misuse charges, present petition was filed. Prayer made was as noted above.

9. As per counter affidavit filed by the DDA, site inspection carried out in the year 1983 revealed that the school was being run from the building. Show cause notice dated 28.5.1983 was issued to the petitioner to show cause as to why misuse be not levied. There being no response, another show cause notice dated 7.1.9184 was issued. Petitioner did not respond to the said show cause notice inspire of being served Accordingly it was held that there was a misuse. According to the DDA, petitioner did not intimate that he had removed the misuse. It was only when an inspection was carried out in the year 1995, pursuant to the conversion application made it was reported that there was no misuse. Accordingly, misuse charges were levied from May 1983 to December, 1995.

10. Petitioner has relied upon certain documents in the present petition to show that there was no misuse. Issue however, has to be determined within the parameters of scope of judicial review.

11. Proceedings under Article 226 of the [Constitution of India](#) concern themselves with the decision making process and not with the merits of the decision. The first and foremost issue is whether the petitioner was served with a show cause notice and the second issue to be determined is, was the petitioner given a fair hearing. Merits come later.

12. Petitioner has categorically admitted in the present proceedings that he was served with the notice, being Annexure-VII on 7.1.1984. Even this is the case of DDA. It is thus obvious that a show cause notice was issued and received by the petitioner. In the show cause notice it was intimated to the petitioner that as per DDA, a school was being run from the building.

13. On the issue whether petitioner was heard, hearing would have to be granted if petitioner responded to the notice. As per the petitioner, he responded to the notice under cover of letter dated 15.1.1984. According to the petitioner said letter was hand delivered in the office of the DDA on 18.1.1984. It was diarised vide no.3288. DDA denies the same.

14. Counsel for the petitioner contends that the letter dated 15.1.984 bears stamp of the DDA. Counsel contends that receipt register may be summoned. Counsel

contends that in view of the fact that petitioner had sent the reply to DDA which was duly received, admittedly, no hearing being granted, any decision of the DDA on the issue was vocative of principles of natural justice. Counsel contends that this assumes greater importance in view of the fact that petitioner had denied that there was any school named Premier Public School which was operating from the site.

15. Counsel for the DDA contends that in the year 2004 it was impossible for DDA to produce the receipt register of the year 1984. Counsel contends that a receipt register is not a statutory record to be preserved by DDA. Counsel contends that there is intrinsic evidence of the reply dated 15.1.1984 being a fabricated document.

16. Counsel for the DDA draws attention of this Court to the fact that before approaching the Court, petitioner had moved the permanent Lok Adalat (DDA). In the proceedings held before the Lok Adalat, petitioner had denied receipt of any notice. On 17.12.2002, the permanent Lok Adalat noted that show cause notice dated 7.1.1984 was served upon the petitioner as per report of the process server dated 13.1.1984. Copy of the show cause notice bearing an endorsement recording receipt of the show cause notice was on file of DDA. Order records that the petitioner denied having received the show cause notice. Order records that there being no meeting ground between the parties, there was no possibility of settlement at the forum. Proceedings were closed. Petitioner was left to seek redressal from appropriate court.

17. Relying upon the order dated 17.12.2002 (available at page 74 of the writ record), counsel for the DDA contends that before the Lok Adalat, petitioner denied having received the show cause notice when he was confronted with the office copy of the notice. Counsel contends that knowing fully well that said show cause notice would be relied upon by DDA in the present proceedings, petitioner had taken a stand that same was received but has relied upon his alleged reply dated 15.1.1984.

18. Order dated 17.12.2002 of the permanent Lok Adalat reads as under:-

'Present: Sh.Subhash Chander, petitioner in person and Sh. Ranbir Singh, AD (RL), DDA- Respondent.

Mr. Ranbir Singh has filed a written reply, copy of which has been supplied to the petitioner. The stand of the department is that show cause notice regarding detection of misuse by running Premier Public School was sent on 28.5.83 and when it was not responded another show cause notice was sent on 7.2.84. The department thereforee worked out misuse charges from 28.5.83 to 11.2.95. The petitioner denies having receipt of any show cause notice. At the back of the show cause notice dated 28.5.83 it is mentioned by the Process Server that when he went to serve the show cause notice he found the house locked and, thereforee, the show cause notice was pasted. At the back of the show cause notice dated 7.1.84 is the report of Process Server dated 13.1.84 that show cause notice was duly served. The copy bears endorsement regarding receipt of show cause notice. This fact is denied by the petitioner. Hence there is no meeting ground between the parties and the matter cannot be settled at this Forum. The petitioner is free to seek his redressal of grievance from appropriate Court. Case is disposed as unsettled.

Judge- S.M. Aggarwal

Presiding Officer,

PLA-I, DDA.'

19. Had the petitioner responded to the show cause notice dated 7.1.1984 by and under his reply dated 15.1.1984, I see no reason why petitioner could not have placed the said reply for consideration of the permanent Lok Adalat. Had the petitioner done so, the permanent Lok Adalat which even records evidence could have gone into the entire aspect of the controversy now raised. Petitioner took a stand before the Lok Adalat that he never received the show cause notice dated 7.1.1984. Obviously, petitioner took the said stand when he was confronted with the record of the DDA showing receipt of show cause notice as per report of the process server. Most convenient defense of denial was taken. In the present proceedings, petitioner had made a somersault. It is obvious that the petitioner has

fabricated his alleged reply. There is strong presumptive and probative evidence in the form of proceedings before the permanent Lok Adalat that the said reply saw the light of the day after the permanent Lok Adalat passed the order on 17.12.2002.

20. Counsel for the petitioner contends that house tax record of MCD would reveal that house tax assessment of the property was revised by the MCD w.e.f. 1.4.1989. Counsel relies upon the assessment order dated 14.10.1995 to show that the MCD determined the rateable value of the property treating it to be residential. Petitioner also relies upon certificates issued in the year 2002 by the responsible welfare association.

21. I am afraid this Court cannot adjudicate on facts in the present proceedings. It cannot appraise material not brought to the notice of the Statutory Authority.

22. What is relevant is that when the petitioner received a show cause notice alleging misuse, inspired of being served he chose not to file a reply. One has to take a defense before the authority concerned and only where the administrative decision either fails to consider the defense or passes an order on irrelevant considerations or relevant material is ignored, alone can a challenge be made to the said decision.

23. Petitioner has been changing his stand. There is probative and presumptive evidence of Annexure P-VIII, being a fabricated document. Petitioner must suffer for his conduct.

24. Writ petition is dismissed. No costs.

September, 2004

Pradeep Nandrajog, J.

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